

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE

IDS ELECTRICAL CONTRACTING CORP.  
and ELECTRICAL SOLUTIONS, INC.

and

Case 22-CA-22034

LOCAL UNION NO. 164, IBEW

*Saulo Santiago, Esq.* for the General Counsel.

SUPPLEMENTAL DECISION

Statement of the Case

On July 28, 1998 the National Labor Relations Board issued an order directing that IDS Electrical Contracting Corp. and its alter ego, Electrical Solutions, Inc. ("Respondent") honor and abide by the terms of its collective-bargaining agreement and pay all contractually required benefit fund contributions, with interest. On February 17, 1999 the United States Court of Appeals for the Third Circuit entered its judgment enforcing the Board's order.

A controversy having arisen over the amount due under the Board's order, on October 31, 2003 the Regional Director for Region 22 issued a Compliance Specification and Notice of Hearing. On November 19, 2003 Respondent filed an answer stating that the hourly wages were in error and further stating that benefit payments had been made to the employees directly. On January 27, 2004<sup>1</sup> the Regional Director issued an Amended Compliance Specification, which alleged that Respondent owed a total of \$6,161 to the funds, instead of the amount of \$8,660, which appeared in the original Specification.

A hearing was held before me on January 27. The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally and file briefs. A letter-brief was filed by General Counsel on February 18. Upon the entire record of the case, I make the following:

Findings of Fact

1. Computation of Amount Owed

The compliance officer calculated the number of hours worked by each discriminatee multiplied by the hourly wage rate for each job classification for each quarter. The gross backpay was then divided by the contribution rates for the pension, welfare and annuity funds of 15%, 12% and 10%, respectively. I find that the Amended Backpay Specification utilized the appropriate measure for determining the amount owed to the benefit funds.

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<sup>1</sup> All dates refer to 2004 unless otherwise specified.

## 2. Payments to Funds

5 In its answer Respondent asserted that it had already made the payments which were due to the funds by making payments to the discriminatees directly. The Board's order required that Respondent "pay all contractually required benefit fund contributions" with interest. It is uncontested that Respondent did not comply with the order and did not make payments to the funds. Respondent contends, however, that it paid the discriminatees directly and should not be required to make additional payments to the funds. In *Stone Boat Yard*, 264 NLRB 981, 982 (1983), enfd. 715 F. 2d 441 (1983), cert. denied 466 U.S. 927 (1984), the Board held that the respondent violated the Act by ceasing to make contributions to the union health, welfare and pension funds and by instead implementing the company-funded medical insurance plan.

15 In *Roman Iron Works*, 292 NLRB 1292 (1989), the company made an argument similar to the Respondent in this case. The respondent there asserted that it satisfied its duty when it reimbursed the discriminatee directly for health insurance coverage even though it did not make the payment to the union's welfare fund. The Board disagreed, stating (*id.* at 1293, n. 15):

20 In order to be made whole...a discriminatee must be restored to the position he would have occupied had the discrimination not occurred. This includes not only reimbursement of the discriminatee's premium and medical expenses, but also requires the Respondent to contribute to the Welfare Fund according to the expired contract's terms so that the discriminatee's future interest in the Fund will be ensured. "[T]he diversion of contributions from the union funds undercut[s] the ability of those funds to provide for future needs." *Stone Boat Yard v. NLRB*, 715 F. 2d 441, 446 (9<sup>th</sup> Cir. 1983).

## 30 Conclusions of Law

35 I find that the backpay computations, as amended, are appropriate. Respondent has not sustained its burden of showing that there should be any offsets. *NLRB v. Brown & Root*, 311 F. 2d 447, 454 (8<sup>th</sup> Cir. 1963).

40 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:<sup>2</sup>

## ORDER

45 The Respondent, IDS Electrical Contracting Corp. and its alter ego, Electrical Solutions, Inc., their officers, agents, successors and assigns, shall, jointly and severally, make the

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<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

following payments to the Union's funds: Welfare Fund, \$2497.88; Pension Fund, \$1998.30; Annuity Fund, \$1665.25; totaling \$6161.44, plus interest, computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

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Dated, Washington, D.C.

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D. Barry Morris  
Administrative Law Judge

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